IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WA.No. 1432 of 2007

AGAINST THE INTERIM ORDER IN WPC.15523/2007 Dated 13/06/2007

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APPELLANT: PETITIONERS IN WP(C):
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1. GEORGE ALEXANDER,
MUTHOOT MEDICAL CENTRE, KOZHENCHERRY.

2. VALSA KURIEN,
MUTHOOT MEDICAL CENTRE, KOZHENCHERRY.

BY SR. ADV. SRI K.P.DANDAPANI
& ADV. SRI.MILLU DANDAPANI

RESPONDENTS: RESPONDENTS IN WP(C):
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1. THE TAHSILDAR,
TALUK OFFICE, KOZHENCHERRY, PATHANAMTHITTA.

2. THE REVENUE DIVISIONAL OFFICER, ADOOR.

3. THE DISTRICT COLLECTOR, PATHANAMTHITTA.

4. STATE OF KERALA,
REPRESENTED BY THE SECRETARY, DEPARTMENT OF
LOCAL SELF GOVERNMENT, GOVERNMENT SECRETARIAT,
TRIVANDRUM.

BY SPL. GOVERNMENT PLEADER (TAXES) SRI V.V.ASHOKAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A.No.1432/2007 & W.P.(C).No.15523/2007

Dated, this the 20th day of June, 2007

JUDGMENT

H.L. DATTU, CJ.

Sri Ashokan, learned Special Government Pleader (Taxes), is directed to take notice for the respondents. He is permitted to file his memo of appearance within six weeks from today.

2. Petitioners own a building in Sy.No.333/3 of Kozhencherry village. The assessing authority had passed an order of assessment under the provisions of the Kerala Building Tax Act and the Rules framed thereunder. Thereafter the assessing authority had issued a notice under sec.15(1) of the Act inter alia directing the petitioners to show cause why an order of re-assessment should not be passed. Petitioners had filed their objections. It is the grievance of the petitioners that the respondent/assessing authority without considering those objections had proceeded to pass an order of reassessment by confirming the proposal made in the notice. Aggrieved by that action, the petitioners were before this court on an earlier occasion. This court was pleased to dispose of the writ petition with certain directions to the respondents.

3. After the disposal of the writ petition, yet another order was passed by the assessing authority, which he calls as an order of re-assessment and thereafter had issued a demand notice. Aggrieved by the so-called order of re-assessment and the demand notice issued, the assessee had preferred an appeal before the first appellate authority. He was unsuccessful before the first appellate authority. Thereafter he had filed a revision petition before the District

Collector, Pathanamthitta. Along with the revision petition he had also filed an application for exemption from payment of the tax for the purpose of entertaining the revision petition.

4. After notice, the revisional authority has passed an order dated 24.3.2007, inter alia directing the petitioner to make a deposit of 25% of the amount demanded by the assessing authority.

5. Since the assessee failed to comply with the aforesaid order passed, the revisional authority has rejected the revision petition itself. Aggrieved by the order so passed, the petitioners were before this court in W.P.(C) No.15523/2007.

6. The learned Single Judge, while entertaining the writ petition, had granted an interim order, staying the proceedings of revenue recovery by the respondents to recover the amount demanded under the provisions of the Kerala Building Tax Act. After hearing the respondents, the learned Judge by order dt. 13.6.2007 has vacated the interim order granted earlier. The order passed reads under:

> "It is seen from the affidavit filed by the 1st respondent that re-measurement was done pursuant to Ext.P10 judgment and the present demand is the building tax found payable for actual plinth area. Therefore, stay is vacated. However, recovery or payment made will be subject to result of W.P.C."

7. Aggrieved by the order so passed, petitioners are before us in this appeal.

8. Sri Dandapani, learned Sr. counsel appearing for the appellants, would vehemently contend that the learned Single Judge has misdirected himself while

passing the impugned order dated 13.6.2007 and, therefore, he requests us to interfere with the orders so passed and set aside the same.

9. Sri Ashokan, Spl. Government Pleader (Taxes) sought to justify the impugned order.

10. The issue in this case lies in a very narrow compass. Aggrieved by the orders passed by the appellate authority, admittedly the petitioners had filed a revision petition before the District Collector, Pathanamthitta. Along with the revision petition they had also filed an application for exemption from payment of the disputed tax. The revisional authority had directed the petitioner to pay 25% of the disputed tax. Since that amount had not been paid, the revisional authority has rejected the revision petition. The petition that was filed by the petitioners was questioning the correctness or otherwise of the order so passed by the revisional authority. The learned Judge, without expressing any opinion on the correctness or otherwise of the impugned order, should not have vacated the interim order granted earlier, merely on the submission made by the learned counsel appearing for the 1st respondent. In our opinion the order so passed cannot be sustained by us. Therefore, we intend to set aside the impugned order passed by the learned Single Judge and then direct the revisional authority to restore the revision petition, if it is filed, subject to the petitioners/appellants depositing a sum of Rs. 2 lakhs within a month's time from today.

11. In the result, the following:

Order

i) The writ appeal is disposed of.

ii) The order passed by the learned Single Judge in W.P.(C)

No.15523/2007 dt. 13.6.2007 is set aside.

iii) The order passed by the revisional authority dt. 27.4.2007 is set aside.

12. Now a direction is issued to the petitioners to deposit a sum of Rs.2 lakhs within a month's time from today. If such deposit is made within the aforesaid time, the revisional authority shall restore the revision petition and then proceed to decide the revision petition on merits. All the contentions of both the parties are left open.

13. In view of the orders passed by us, in our opinion, nothing survives in W.P.(C) No.15523/2007 for consideration and decision. Therefore, the writ petition is also disposed of as having become unnecessary.

14. Till the revisional authority decides the matter one way or the other, the revenue recovery authorities are restrained from taking any coercive steps against the petitioner for the recovery of the amounts demanded by them pursuant to the orders of re-assessment passed by the assessing authority.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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